

Nutrient Trading Certification Regulations (4 VAC 50-80-10 et seq.)

Regulatory Advisory Panel (RAP)

Wednesday, November 14, 2012; Meeting #1

Regulatory Action Overview, Regulatory Timeline, and Committee Charge

Regulatory Action Overview

Brief Background

Chapters 748 (HB176) and 808 (SB77) of the 2012 Virginia Acts of Assembly established the Nutrient Trading Act [Article 1.1:1 of Title 10.1 (§10.1-603.15:1 et seq.)] which requires the Virginia Soil and Water Conservation Board to adopt regulations related to Nutrient Credit Certification.

Specifically, §10.1-603.15:2 A. requires the Virginia Soil and Water Conservation Board (Board) to:
“adopt regulations for the purpose of establishing statewide procedures for the certification by the Board of nutrient credits other than (i) point source nitrogen and point source phosphorus credits generated by point sources covered by the general permit issued pursuant to §62.1-44.19:14 and (ii) nutrient credits certified by the State Water Control Board and the Department of Environmental Quality pursuant to §62.1-44-19:20”.

Nonpoint credits established by the Virginia Soil and Water Conservation Board in accordance with the legislation and this regulatory action may include credits generated from agricultural and urban stormwater best management practices, incineration or management of manures, land use conversion, stream or wetlands restoration, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal.

The end result of the *Nutrient Trading Certification Regulations* is to establish a registry of credits as part of an enforceable market-based trading program that will involve the exchange of pollution allocations between sources. Today, most programs involve exchanges between different point sources; however, with the development of these regulations it is anticipated that additional trading avenues such as point source to nonpoint source trades or nonpoint to nonpoint trades may become prevalent. As specified in the Code, “[t]he regulations shall be designed in a manner that promotes certainty for credit market participants to the extent possible”.

Such trades will be a valuable component towards meeting reductions addressed in the Chesapeake Bay Watershed Implementation Plan and the Chesapeake Bay Total Maximum Daily Load (TMDL).

RAP Purpose

- The purpose of this regulatory action is to develop procedures in accordance with §10.1-603.15:2 of the Code of Virginia, in the form of regulations, through which nonpoint nutrient credits may be certified and registered.

Framework of Stormwater Regulations

- This action will establish new Nutrient Trading Certification Regulations (4VAC50-80-10 et seq.) that shall govern the certification of certain nutrient credits.
- The action may also require revisions to the Stormwater Management regulations (4 VAC 50-60) related to nutrient credit use and additional off-site options for construction activities pursuant to § 10.1-603.8:1.

- Pursuant to §10.1-603.15:2 B 9, the action may also include but not be limited to language that addresses other components of Article 1.1:1 in Chapter 6 of Title 10.1 or Article 1.1 in Chapter 6 of Title 10.1 (the Stormwater Management Act) as deemed necessary.
- As needed, the action may also include the development of necessary forms and may include documents incorporated by reference.

Regulatory Amendment Process

- Regulatory actions are typically comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations. As this regulatory action is not exempt, it will follow the full regulatory process. Routinely under the Administrative Process Act (APA) this takes about 2 years.

Regulatory Action Information

- On the Regulatory Town Hall this is Action 3760 and may be found at:
<http://townhall.virginia.gov/L/ViewStage.cfm?stageid=6273>
- Additional information regarding the regulatory action and the RAP meetings may be found on DCR's website in the Policy, Regulations, and Public Comments Section under the Nutrient Trading tab at:
<http://www.dcr.virginia.gov/lr6.shtml>

Regulatory Timeline (TENTATIVE – MAY BE SUBJECT TO CHANGE)

- **June 28, 2012**, the Board authorized and directed the filing of a Notice of Intended Regulatory Action (NOIRA).
- **July 24, 2012**, filed NOIRA on the Town Hall for Administrative Review.
- **August 21, 2012**, filed NOIRA with the Registrar of Regulations.
- **September 10, 2012**, published in Volume 29: Issue 1.
- **September 10, 2012 – October 10, 2012**, 30-day public comment period.
- **October 18, 2012**, sent e-mail making RAP appointments.

Next steps for Nutrient Trading Certification Regulations (Action 3760) (target dates):

- **November 14, 2012**, RAP meeting 1.
- **December 13, 2012**, RAP meeting 2.
- **February 1, 2013**, RAP meeting 3.
- **February 22, 2013**, RAP meeting 4.
- **March 20, 2013**, RAP meeting 5.
- **April 10, 2013**, RAP meeting 6, tentative date if 6th meeting needed.
- **April 25, 2014**, Complete proposed regulations; mail recommended proposed regulation to Board.
- **May 9, 2013**, Virginia Soil and Water Conservation Board to pass motion approving and authorizing the filing of the proposed regulations.
- **May and June**, finish development of draft of Proposed Package [Form TH-2].
- **June 26, 2013**, proposed regulatory action filed on Regulatory Town Hall and sent to AG for approval.
- **June 28, 2013**, DPB review (including economic analysis) – 45 day deadline.
- **August 12, 2013**, DPB completes economic analysis.
- **August 14, 2013** - Agency response to Economic Analysis issued.
- **August 12, 2013 – August 26, 2013**, Cabinet Secretary shall review the proposed regulation package within 14 days and forward a recommendation to the Governor.
- **August 26, 2013 – October 26, 2013**, Governor's Review (no deadline).

- **October 29, 2013**, within 14 days of Governor's approval, the Agency shall submit the proposed regulation package to the Registrar.
- **October 30, 2013**, proposed Nutrient Trading Regulation sent to Registrar.
- **November 11, 2013 – January 10, 2014**, Nutrient Trading Regulation Published in Register and 60-day public comment period commences.
- **December 10, 11, 12, 2013 (Tentative Dates)**, Public hearings held during the public comment period.
- **March 13, 2014**, Agency assembles final regulatory action package; mail recommended final regulation to Board.
- **March 27, 2014 (potential target date for meeting)**, Virginia Soil and Water Conservation Board to pass motion adopting and authorizing the filing of the final regulations.
- **February and March**, finish development of draft of Final Package [Form TH-3].
- **April 14, 2014**, regulatory action filed on Regulatory Town Hall and sent to AG for approval.
- **April 17, 2014 – May 1, 2014**, DPB review – 14 day deadline.
- **May 5, 2014 – May 19, 2014**, Cabinet Secretary shall review the proposed regulation package within 14 days and forward a recommendation to the Governor.
- **May 20, 2014 – August 18, 2014**, Governor's Review (no deadline).
- **August 20, 2014**, within 14 days of Governor's approval, the agency shall submit the proposed regulation package to the Registrar.
- **August 8, 2014 – October 8, 2014**, final Nutrient Trading Regulation published in Register (30-day final adoption period).
- Final Regulation is effective.

Regulatory Advisory Panel (RAP) Charge

- The purpose of the panel is to assist in developing nutrient trading certification regulations. This panel has been formed to help the Department and the Board balance the thoughts and concerns of all those interested in this regulatory action. All such thoughts and concerns will be addressed by the panel, and any panel member is free to advance any opinion.
- The role of the panel is advisory. The panel's primary responsibility is to collaboratively contribute to a regulation that is in the best interests of the Commonwealth as a whole and that is compliant with state and federal law.
- The panel's goal is to reach a consensus on these regulations and make recommendations to the Department and Board. For the purposes of this RAP, consensus is generally defined as a willingness of each member of a panel to be able to say that he or she can live with the decisions reached and will not actively work against them outside of the process.
- This is not to say that everyone will be completely satisfied by the results of the process. It is necessary, however; that each participant come prepared to negotiate in good faith around complex and sensitive issues. Also, because the panel represents many different interests, all members should expect to compromise in order to accomplish the group's mission. If the group cannot reach consensus, the Department staff will advance as a recommendation what it views is the best balanced regulation but will present the differing opinions to the Board.
- Voting, per se, is contrary to a consensus-based process, but people may be asked to demonstrate their strength of feeling for or against a particular idea, and may be asked to help set priorities during the course of the process.